

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHRISTOPHER MCCROBIE,

Plaintiff,

v.

1:15-cv-00018-LJV-MJR

PALISADES ACQUISITION XVI, LLC;
ASTA FUNDING, INC.;
HOUSLANGER & ASSOCIATES, PLLC;
TODD HOUSLANGER

Defendants.

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO DEEM
DOCKET ENTRY 88-1 AS HAVING BEEN FILED WITH PLAINTIFF'S MOTION TO
AMEND NUNC PRO TUNC AND FOR LEAVE TO RE-FILE THE EXHIBITS TO
PLAINTIFF'S COMPLAINT**

A *nunc pro tunc* order should be granted or refused, as justice may require in view of the circumstances of the particular case. *Mitchell v. Overman*, 103 U.S. 62, 65, 1880 WL 18766, at *2 (U.S.,1880). Here, Defendant Palisades argues that Plaintiff should not be permitted to proceed with his amended complaint against Defendants because a redlined copy of the complaint was inadvertently not filed with his motion to amend, and because some exhibits are either missing or were filed incorrectly. *See* Dkt#85, 89. As laid out in the accompanying affidavit, Plaintiff Defendants have had copies of the redlined complaint, as well as all of the exhibits for years. As such, it would be an extreme sanction to deny Plaintiff's motion for failing to attach the redlined complaint at Dkt 88-1 to his motion to amend, and for misfiling several exhibits. *See Deal v. Seneca County*, 2009 WL 3378671, at *3 (W.D.N.Y.,2009) (The Second Circuit clearly supports dismissal in extreme circumstances, and this case is not extreme.

Consequently, the Court permits *nunc pro tunc* the filing of plaintiffs' Amended Complaint effective May 12, 2009.”). Finally, Plaintiff notes that granting this motion will help clarify the issues relevant for oral argument and narrow the issues the Court must resolve.

CONCLUSION

By reason of the foregoing, Plaintiff’s motion should be granted in all respects.

Dated: May 15, 2019

/s/ Timothy Hiller
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